IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4297 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRATLAL TALSIBHAI DESAI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR BM MANGUKIYA for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR PARESH UPADHYAY for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/12/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the order dated 20.2.1997 accepting the resignation of the

petitioner though the petitioner has withdrawn the resignation before the effective date of the resignation.

2. It is the case on behalf of the petitioner that the petitioner joined services as Store-Keeper with the respondent No.2 from 31.12.1981 and he worked as Store-Keeper till the interim order came to be passed. It is the case on behalf of the petitioner that he has taken active part in the union activities and was leader of the union of Class-III and Class-IV employees of the respondents and he was also the President of the union of Class-III and Class-IV employees of the respondent Corporation. That in the capacity of President of the union, he was required to see the management of the respondent No.2 – Corporation so as to represent the grievance of the employees and in the course of such representation, he was subjected to undue pressure by the management of the respondent No.2 – Corporation. That since he was not relenting to the undue pressure of the

management, he was victimized and he was also placed under suspension under the flimsy ground. That the departmental inquiry was initiated against the petitioner and the Inquiry Officer was appointed on 7.10.1996 and the statement of the petitioner was also recorded before the Inquiry Officer on 7.1.1997. It is the case on behalf of the petitioner that the petitioner under frustration submitted his resignation vide communication dated 2.12.1996 and the petitioner informed the Executive Director that the charge-sheet served upon the petitioner is based upon no evidence. That the resignation of the petitioner was forwarded by the petitioner through proper channel i.e. Hydrologist of the Underground Water Division No.1, Ahmedabad and the said Hydrologist forwarded the said letter of resignation to the Executive Engineer vide its letter dated 2.12.1996. It is the case on behalf of the petitioner that thereafter the petitioner was persuaded by all to succumb to the pressure and not to submit the resignation and was persuaded not to give-up his job and

therefore, vide letter dated 6.1.1997, he withdrew the resignation. It is further submitted that in the said letter of withdrawal, he mentioned that on account of the family tie-up, the petitioner no longer is wanted to resign from the services and therefore, he withdrew the resignation. That the said letter was delivered by hand on 8.1.1997. That the respondents did not reply to the letter dated 6.1.1997 and it is the case on behalf of the petitioner that he was expecting that the communication of the petitioner was not accepted and the petitioner would be continued under suspension during the pendency of the departmental inquiry. That the petitioner received an order dated 20.2.1997 whereby, he was informed that his resignation was accepted w.e.f. 20.2.1997. That the said resignation was accepted with a condition that it would be subject to the result of the departmental inquiry. Being aggrieved and dissatisfied with the aforesaid communication/ order dated 20.2.1997 accepting his resignation, the petitioner has preferred the present Special

Civil Application under Article 226 of the Constitution of India.

3. The learned advocate appearing for the petitioner has vehemently submitted that before the acceptance of the resignation, the petitioner was having all rights to withdraw his resignation and as before the acceptance of the resignation, the resignation has been withdrawn and therefore, the impugned order/ communication on the part of the respondents in accepting the resignation w.e.f. 20.2.1997 is absolutely illegal. The learned advocate appearing for the petitioner has relied upon the decisions of the Hon'ble Supreme Court in case of ***SRIKANTHA S.M. V/s. BHARATH EARTH MOVERS LTD.*** reported in **(2005)8 SCC P.314**, ***SHAMBHU MURARI SINHA V/s. PROJECT & DEVELOPMENT INDIA LTD. AND ANOTHER*** reported in (**2002)3 SCC P.437** and in case of ***UNION OF INDIA AND ANOTHER V/s. WING COMMANDER T. PARTHASARATHY*** reported in (**2001)1 SCC P.158** and therefore, it is requested to allow the present Special Civil Application.

4. Shri Paresh Upadhyay, learned advocate appeared for the respondent – Corporation. He is not in a position to dispute the propositions of law that before the actual acceptance of the resignation, an employee can withdraw the resignation. He is also not in a position to dispute that the controversy raised in the present Special Civil Application is covered by aforesaid three decisions of the Hon'ble Supreme Court. However, he has submitted that by way of interim order, the respondents were permitted to proceed further with the disciplinary proceedings initiated against the petitioner and pursuant to the same, the departmental inquiry was proceeded further and by order dated 12.1.1999 the petitioner was removed from the services and at the time of passing the order of accepting the resignation petitioner was under suspension and therefore, till 12.1.1999 he may be treated under suspension and even if the impugned order accepting the resignation is set aside, in that case also, at the most, the petitioner can be

treated in service till 12.1.1999, till the order of removal has been passed on conclusion of the departmental inquiry and consequently he is entitled to the subsistence allowance till 12.1.1999.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. It is not in dispute that the petitioner submitted an application for resignation w.e.f. 2.12.1996, by letter dated 2.12.1996, however, before the acceptance of the said resignation, the petitioner withdrew the resignation vide communication dated 6.1.1997 and inspite of that by communication dated 20.2.1997 his resignation came to be accepted w.e.f. 20.2.1997. Thus, admittedly, prior to the acceptance of the resignation and prior to the actual effective date of resignation i.e. 20.2.1997, the petitioner had already withdrawn the resignation on 6.1.1997. Once the resignation was withdrawn prior to acceptance, the respondents were not

justified in accepting the resignation thereafter.

7. In case of **Shambhu Murari Sinha** (supra), the case before the Hon'ble Supreme Court was that the application of the employee for voluntary retirement under the relevant scheme was accepted with the stipulation that release memo along with the detailed particulars would follow and after the said acceptance but before the actual date of release from service the employee submitted an application for withdrawal of his proposal for voluntary retirement and the Hon'ble Supreme Court held that the employee had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employee and employer came to an end. Accordingly, the Hon'ble Supreme Court held that the employee was entitled to rejoin his duty. In case of **Wing Commander T. Parthasarathy** (supra), the Hon'ble Supreme Court has held that a request for premature retirement which required the acceptance of the competent or appropriate

authority will not be completed till accepted by such competent authority and the request could definitely be withdrawn before it became so complete. The Hon'ble Supreme Court has also further observed that it is all the more so in a case where the request for premature retirement was made to take effect from a future date. In case of **Srikantha S.M** (supra), the Hon'ble Supreme Court was considering a case where a resignation was withdrawn after acceptance but before being relieved and the Hon'ble Supreme Court has held that the action of the employer in accepting the resignation and not allowing him to work is illegal and unlawful. In the present case also, though the resignation was tendered on 2.12.1996, the same came to be accepted vide communication dated 20.2.1997 and the petitioner was permitted to retire voluntarily w.e.f. 20.2.1997, however, before 20.2.1997, the petitioner had already withdrawn his resignation vide letter dated 6.1.1997. Under the circumstances, the respondents were not justified in accepting the resignation of

the petitioner and the same is required to be quashed and set aside.

8. Under the circumstances and considering the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, the impugned communication/ order dated 20.2.1997 accepting the resignation of the petitioner w.e.f. 20.2.1997 requires to be quashed and set aside. However, the question which is required to be considered by this Court is that the petitioner is entitled to what relief. At the time when the order of resignation was passed i.e. on 20.2.1997, the petitioner was under suspension. That during the pendency of the present Special Civil Application, by way of interim relief the disciplinary proceedings against the petitioner was permitted to be continued and in fact, the direction was issued to conclude the same within four months by an order dated 5.8.1997. By order dated 12.1.1999 on conclusion of the disciplinary proceedings, the petitioner has been removed from the services and it appears

that the said order has not been challenged till date. Nothing is on record to show that the said order dated 12.1.1999 has been challenged or not. Be that as it may, the fact remains that by order dated 12.1.1999 the petitioner has been removed from services. Under the circumstances, on quashing and setting aside the impugned order dated 20.2.1997, at the most, the petitioner is to be treated in service upto 12.1.1999 and is entitled to all the consequential benefits till 12.1.1999 and in view of the fact that the petitioner was under suspension at the time when the impugned order dated 20.2.1997 was passed, he is to be treated under suspension till 12.1.1999 and is entitled to all the consequential benefits i.e. subsistence allowance till 12.1.1999.

9. For the reasons stated above, the petition succeeds in part. The impugned order dated 20.2.1997 accepting the resignation of the petitioner is hereby quashed and set aside. However, the petitioner be treated in service

till 12.1.1999 and in the present case under suspension till 12.1.1999. Under the circumstances, the petitioner is entitled to subsistence allowance till 12.1.1999 and other consequential benefits, if any and the same benefit be paid to the petitioner within a period of 3 months from the date of receipt of this order.

10. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.SHAH, J.]

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